IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SECOND DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and

THE HON'BLE MR JUSTICE P.S.NARAYANA

W.P.Nos. 7963 of 2004, 11090 of 2004, 18501

of 2004, 20108 of 2004, 20890 of 2004 and

W.P.NO. 4444 of 2005

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WRIT PETITION NO : 7963 of 2004

Between:

R. Basaveswarudu, S/o. Kotinagaiah, aged 33 years,

Occu: Inspector of Central Excise, Tadpatri Range,

D.No. 15-1247, 2nd Road, Sanjeevanagar,

Tadapatri, Anantapur District.

..... PETITIONER

AND

1. The Secretary, rep. Union of India, Ministry of Finance

and Company Affairs, Department of Revenue, 152,

Central Board of Excise and Customs, Computer Centre &

Project Office, North Block, New Delhi.

2.The Chairman, Central Board of Excise and Customs,

North Block, New Delhi.

3. Member (P &V), Central Board of Excise and Customs,

Government of India, Ministry of Finance,
Department of Revenue, North Block, New Delhi.

4. The Chief Commissioner of Customs and Central Excise,

LB Stadium Road, Basheer Bagh, Hyderabad - 11.

5. The Commissioner of Customs and Central Excise,

Hyderabad – II Commissionerate, LB Stadium Road,

Basheer Bagh, Hyderabad - 11.

6.The Commissioner of Customs and Central Excise,

Hyderabad - III Commissionerate, LB Stadium Road,
Basheer Bagh, Hyderabad - 11.

7.D. Raghu, S/o. Late D. Narasimhulu, age 34 years,

Senior Tax Assistant, Earlier Data Entry Operators

Gr.B in Central Excise and Customs Commissionerate

situate in A.P. Region.

8.V. Srinivas, S/o. Ramalingam, age 34 years,

Senior Tax Assistant, Earlier Data Entry Operators

Gr.B in Central Excise and Customs Commissionerate

situate in A.P. Region.

9.K. Suryakala, S/o. Y. Sanjeeva Reddy, age 35 years,

Senior Tax Assistant, Earlier Data Entry Operators

Gr.B in Central Excise and Customs Commissionerate

situate in A.P. Region.

10.K. Seetha, W/o. Rambabu, age 34 years,

Senior Tax Assistant, Earlier Data Entry Operators

Gr.B in Central Excise and Customs Commissionerate

situate in A.P. Region.

11. T. Padmaja, W/o. Srinivasa Rao, age 35 years,
Senior Tax Assistant, Earlier Data Entry Operators
Gr.B in Central Excise and Customs Commissionerate
situate in A.P. Region.
12.P. Seshu Kumar, S/o. Sundara Ramaiah, age 35 years,
Senior Tax Assistant, Earlier Data Entry Operators
Gr.B in Central Excise and Customs Commissionerate
situate in A.P. Region.
13.N. Subba Raju, S/o. N. Rama Das, age 34 years,
Senior Tax Assistant, Earlier Data Entry Operators
Gr.B in Central Excise and Customs Commissionerate
situate in A.P. Region.
14. K. Sai Prasad, S/o. K. Lingappa, age 34 years,
Senior Tax Assistant, Earlier Data Entry Operators
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situate in A.P. Region.

15.G. V. Satyavathi, W/o. Hanumantha Rao, age 36 years,
Senior Tax Assistant, Earlier Data Entry Operators
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situate in A.P. Region.

16.S. Chandra Sekhar, S/o. Shankar, age 30 years,
Senior Tax Assistant, Earlier Data Entry Operators
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17. B. Ramcharan Kumar, S/o. Vijay Kumar, age 35 years,
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18. T. Chandrasekhar, S/o. Late Subbarayudu, age 35 years,

Senior Tax Assistant, Earlier Data Entry Operators

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19.N.C. Veera Raghava, S/o. N.C.R. Acharya, age 35 years,

Senior Tax Assistant, Earlier Data Entry Operators

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situate in A.P. Region.

20. S. Srinivas, S/o. Mallaiah, age 36 years,

Senior Tax Assistant, Earlier Data Entry Operators

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21.M. Srinivasa Reddy, S/o. M.V. Krishna Reddy, age 34 years,

Senior Tax Assistant, Earlier Data Entry Operators

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situate in A.P. Region.

22. M. Vittal Rao, S/o. Venkat Rao, age 35 years,

Senior Tax Assistant, Earlier Data Entry Operators

Gr.B in Central Excise and Customs Commissionerate

situate in A.P. Region.

.....RESPONDENT(S)

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court in the interest of justice be pleased to issue a Writ, order or Direction more particularly one in the nature of Writ of Certiorari and to call for records relating to and connected with Central Administrative Tribunal, Hyderabad Bench, Hyderabad rendered in O.A.No.1362 of 2002 dated 17-2-2004 and to quash or set aside the same with all consequential benefits.

Counsel for the Petitioner: MR.P.NAVEEN RAO

Counsel for the Respondent No.1 to 6 : MR.A.RAJASHEKAR REDDY

S.C. FOR CENTRAL GOVT.

Counsel for the Respondent No.7 to 22: MR. NOOTY RAM MOHANA RAO

WRIT PETITION NO : 11090 of 2004

Between:

1. V.J.Kumar, s/o Brahmam, aged about 33 years,

occu: Inspector of Central Excise, Hindupur-I Range,

Hindupur, Ananthapur District.

2.K.Surendrachary, s/o K.Bhavanachary, aged about 39 years,

occu: Inspector of Central Excise, O/o. The Deputy

Commissioner of Central Excise, Kurnool Division office,

Kurnool.

3.D.Srinivas, s/o D.V.Hanumantha Rao, aged about

39 years, Inspector of Central Excise, Audit,

Hyderabad-I Commissionerate, Hyderabad.

4.C.Harinath, s/o C.Kriahna Murthy, aged about 35 years,

occu: Inspector of Central Excise, Anti-Evasion,

Hyderabad-I Commissionerate, Hyderabad.

5. A.E.Aravinda, s/o A.G.Yethirajulu, aged about 35 years,

occu: Inspector of Central Excise, o/o Deputy Commissioner

of Central Excise, Tirupathi Division, Tirupathi.

6.B.C.A.Bali Reddy, s/o B.C.A.Peda Subba Reddy,

aged about 45 years, occu: Inspector of Central Excise,
o/o The Deputy Commissioner of Central Excise, Tirupathi

Division, Tirupathi.

7.G.Sarada Srinivas, D/o N.V.N.Sarma, aged about 40years,

occu: Inspector of Central Excise, o/o The Superintendent

of Central Excise, Moula-Ali Range, Vikrampuri,
Hyderabad-III Commissionerate, Hyderabad.

8.J.Veeranna Shetty, s/o J.Kistaiah, aged about 39 years,

occu: Inspector of Central Excise, o/o The Deputy

Commissioner of Central Excise, Kurnool Division, Kurnool.

9.A.K.Mohd.Gareeban Nawaz, s/o Zakria Nizami,
aged about 33 years, occu: Inspector of Central Excise,

o/o The Deputy Commissioner of Central Excise,

Kurnool Division, Kurnool.

10.K.Ananta Padmaja, d/o K.C.P. Purnachandra Rao,

aged about 38 years, occu: Inspector of Central Excise,
o/o The Deputy Commissioner of Central Excise,

Tirupathi Division, Tirupathi.

11.Mahalakshmi Shankar, d/o M.s.Ranganathan,

aged about 33 years, occu: Inspector of Central Excise,

Service Tax, Hyderabad-II Commissionerate, Basheerbagh,

Hyderabad.

12.K.N.Anil Kumar, s/o late T.K.Narayan Nair,

aged about 40 years, occu: Inspector of Central Excise,
Unoccumpanied Baggage, Air Cargo Complex,
Begumpet, Hyderabad.

13.C.Hemambhujam, w/o R.Kodandaraman,

aged about 37 years, occu: Inspector of Central Excise,
Secunderabad Cantonment Range, 5th Floor,

CLS Building, Station Road, Hyderabad.

14.B.Raja Sekhar, s/o B.Gopala Rao,

aged about 40 years, occu: Inspector of Central Excise,
Customs (Prev.) Hyderabad-II Commissionerate,

Basheerbagh, Hyderabad.

15.V.Usha Paul, d/o Sri V.Paul, aged about 34 years,

occu: Inspector of Central Excise, Adjudication Section,

Hyderabad-II Commissionerate, Basheerbagh, Hyderabad.

16.Cyril Joseph, s/o Roche Joseph, aged about 36 years,

occu: Inspector of Central Excise, Adjudication Section,

Hyderabad-III Commissionerate, Basheerbagh, Hyderabad.

17.R.Ganesh, s/o late R.Radhakrishnan, aged about 38 years,

occu: Inspector of Central Excise, o/o The Superintendent of

Central Excise, Azamabad-II Range, RTC X Roads, Hyderabad.

..... PETITIONER(S)

AND

1. The Secretary, rep. Union of India, Ministry of Finance

and Company Affairs, Department of Revenue, 152,

Central Board of Excise and Customs, Computer Centre &

Project Office, North Block, New Delhi.

2.The Chairman, Central Board of Excise and Customs,

North Block, New Delhi.

3. Member (P &V), Central Board of Excise and Customs,

Government of India, Ministry of Finance,
Department of Revenue, North Block, New Delhi.

4. The Chief Commissioner of Customs and Central Excise,

LB Stadium Road, Basheer Bagh, Hyderabad - 11.

5. The Commissioner of Customs and Central Excise,

Hyderabad – II Commissionerate, LB Stadium Road,

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15.G. V. Satyavathi, W/o. Hanumantha Rao, age 36 years,

Senior Tax Assistant, Earlier Data Entry Operators
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16.S. Chandra Sekhar, S/o. Shankar, age 30 years,
Senior Tax Assistant, Earlier Data Entry Operators
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18. T. Chandrasekhar, S/o. Late Subbarayudu, age 35 years,
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22. M. Vittal Rao, S/o. Venkat Rao, age 35 years,
Senior Tax Assistant, Earlier Data Entry Operators

Gr.B in Central Excise and Customs Commissionerate

situate in A.P. Region.
.....RESPONDENT(S)

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court in the interest of justice be pleased to issue a Writ, order or Direction more particularly one in the nature of Writ of Certiorari and to call for records relating to and connected with Central Administrative Tribunal, Hyderabad Bench, Hyderabad rendered in O.A.No.1362 of 2002 dated 17-2-2004 and to quash or set aside the same with all consequential benefits.

Counsel for the Petitioner: MR.P.NAVEEN RAO

Counsel for the Respondent No.1 to 6 : MR.A. RAJASHEKAR REDDY

S.C. FOR CENTRAL GOVT.

Counsel for the Respondent No.7 to 22: MR. NOOTY RAM MOHANA RAO

WRIT PETITION NO : 18501 of 2004

Between:

1. Union of India rep. by its Secretary, Ministry of Finance

and Company Affairs, Department of Revenue, 152,

Central Board of Excise and Customs, Computer Centre &

Project Office, North Block, New Delhi.

2. Central Board of Excise and Customs represented by The

Chairman, North Block, New Delhi.

3. Central Board of Excise and Customs rep. by its

Member (P &V), Government of India, Ministry of Finance,
Department of Revenue, North Block, New Delhi.

4. The Chief Commissioner of Customs and Central Excise,

LB Stadium Road, Basheer Bagh, Hyderabad - 11.

5. The Commissioner of Customs and Central Excise,

Hyderabad – II Commissionerate, LB Stadium Road,

Basheer Bagh, Hyderabad - 11.

6.The Commissioner of Customs and Central Excise,

Hyderabad - III Commissionerate, LB Stadium Road,
Basheer Bagh, Hyderabad - 11.

... PETITIONER(S)

AND

1. D.Raghu, S/o Late D.Narasimhulu, age 32 years,

PLA Section, Hyd-II Commissionerate, Shulk Bhavan,

L.B.Stadium Road, Basheer Bagh, Hyderabad

2.V.Srinivas, S/o Ramalingam, Age 32 years,

Div-A, CLS Buildings, Station Road, Nampally,

Hyd-I Commissionerate, III Floor.

3.K.Suryakala, W/o Y.Sanjeev Reddy, Age 33 years,

S-Tax, Hyd-IV Commissionerate, Posnett Bhavan,

Ramkoti, Hyderabad

4.K.Seetha, W/o Rambabu, Age 32 years, Estt, Hyd-I

Commissionarate, 2nd Floor, Shulk Bhavan,

L.B.Stadium Road, Basheerbagh, Hyderabad

5.T.Padmaja, W/o Srinivasa Rao, aged 33 years, Divn.M,

Chinnatokatta, Opp.Hanuman Temple, Bowenpally,

Hyd-IV Commissionerate

6.P.Seshu Kumar, S/o Sundara Ramaiah, Age 32 years,

CCO, I Floor, Shulk Bhavan, L.B.Stadium Road,

Basheerbagh,Hyderabad

7.N.Subba Raju, S/o N.Ram Das, age 32 years, Divn.E, CLS

Buildings, III Floor, Station Road, Nampally, Hyd-II

Commissionerate

8.K.Sai Prasad, S/o K.Lingappa, age 32 years, Technical Sec;

Hyd-I, 2nd Floor, Shulk Bhavan, L.B.Stadium

Road, Basheerbagh, Hyderabad-11

9.G.V.Satyavathi, W/o Hanumantha Rao, age 34 years, Statistics Section, 2nd Floor, Shulk Bhavan, Basheerbagh, Hyd-I Commissionerate, Hyderabad-1

10.S.Chandra Shekar, S/o Shankar, Age 28 years, S.Audit, Hyd-I Commissionerate, 2nd Floor, Shulk Bhavan, L.B.Stadium Road, Basheerbagh, Hyderabad-11

11.B.Ram Chara Kumar, S/o Vijay Kumar, Age 33 years, Legal Cell, Hyderabad-IV Commissionerate, Ground Floor, Posnett Bhavan, Ramkoti, Hyderabad-1

12.T.Chandrshekar, S/o Late Subbarayadu, age 33 years, Adjudication Cell, Hyd-III Commissionerate, 4th Floor, Shulk Bhavan, Basheerbagh, Hyd-11

13.N.C.Veera Raghava, S/o N.C.R.Acharya, Age 33 years, Divn.D, CLS Buildings, 4th Floor, Station Road, Nampally, Hyderabad-1

14. S.Srinivas, S/o Mallaiah, age 34 years, Nizamabad Division. H.No.7-9-882/1 to A, KNAR Estate,III Floor, beside Ashok Theatre, Nizamabad

15.M.Srinivas Reddy, S/o M.V.Krishna Reddy, age: 32 years, CIU, Hyd-1, 2nd Floor, Shulk Bhavan, L.B.Stadium Road, Basheerbagh, Hyderabad-11

16.M.Vittal Rao, S/o Venkat Rao, age 33 years, Nalgonda Divn., H.No.5-8-259/A, Beside Govt.I.T.I., Miryalaguda Road, Nalgonda

(All the Respondents are working as Sr.Tax-Asst.in Customs and Central Excise Department at Hyderabad Zone)

.....RESPONDENT(S)

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Certiorari, or any other appropriate Writ, order or direction, calling for

the records pertaining to O.A.No.1362 of 2004 dated 17-02-2004 on the file of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad and quash the same as illegal, arbitrary, contrary to law and unconstitutional and declare the same as void abinitio, null and void and nonest in the eye of law.

Counsel for the Petitioner: MR.ARAJASHEKAR REDDY

(SC FOR CG)

Counsel for the Respondents: None appeared.

WRIT PETITION NO : 20108 of 2004

Between:

1.J.Radha Krishna, S/o. Sri J. Lakshmaiah, aged about 42 years, occ: Inspector of Central Excise, Kakinada-II Range,Division-II, Vizag-II, Commissionerate, workingat Range -II, Division-II, Kakinada, r/o. S4, Rams Enclave, Kakinada-4.

2.I. Satyavardhan Rao, S/o. I. Hanmantha Rao, aged about 41 years, occ: Inspector of Central Excise, Gajuvaka-II, Division-V, Vizag, R/o. Plot No.48, Sector-XI, MVP Colony, Visakhapatnam.

3.A. Sreedhar, S/o. Late A. V. Subba Rao, aged about 39 years, occ: Inspector of Central Excise, Gajuvaka-III, Range IB, Division-I, Vizag, R/o. MIG, Plot No.62, Sector-XI,MVP colony, Visakhapatnam.

4.P.V.A. Narasimham, S/o. Late P. Rama Krishna Rao, aged about 40 years, occ: Inspector of Central Excise, Audit, Vizag-I Commissionerate, Vizag, R/o. D.No.29-5-25, Lalitha Colony, Visakhapatnam.

5.S.N. Rama Sharma, S/o. Sri S. Murali, aged about 33 years, occ: Inspector of Central Excise, Anti-Evasion, Vizag-II Commissionerate, R/o. Flat No.303, Sun-N-Sun Apartments,

Kirlampudi Layout, Visakhapatnam.

6.Anjuru Srinivas, S/o. Sri A.S. Rama Gopal, aged about 43 years, occ: Inspector of Central Excise, Legal Section, Vizag, I Commissionerate, R/o. D.No.10-37-10, Vigneswara Arcade, Ramnagar, Visakhapatnam.

7.B.S.N. Prasad, S/o. B. Nageswar Rao, aged about 33 years, occ: Inspector of Central Excise, working at CPU, Division-I, Kakinada,,R/o. D.No.7-5B-4/1,Gopala Krishna Street, Rama Raopet, Kakinada.

8.Ch. V.V.L.N. Kamalakara Rao, S/o. SriCh. V.V.Ranga Rao, aged about 33 years,occ: Inspector of Central Excise, Working at Range-II, Division-II, Kakinada, R/o. D.No.60-10-3/3, Naicker Street, Opp: M.S.N. Charities, Jagannaickpur, Kakinada.

9.J. Lakshmi Prasad, S/o. late J. Narayana Murthy, aged about 40 years, occu: Inspector of Central Excise, Divisional Office, Kurnool, R/o. 45-24 W Ashok Nagar, Kurnool.

10.M. Bhaskar Choudary, S/o. M. Rama Naidu, aged about 33 years; occu: Inspector of Central Excise, Working at Patancheru-I Range, Division -A, Hyderabad, R/o. Plot No. 164/A, Srikiran Apts., G4, Kalyan Nagar, Phase-I, Vengalraonagar, Hyderabad.

..... PETITIONERS

AND

1.The Secretary rep. Union of India, Ministry of Finance and Company Affairs, Department of Revenue, 152, Central Board of Excise and Customs, Computer Centre & Project Office, North Block, New Delhi.

2.The Chairman, Central Board, of Excise and Customs, North

Block, New Delhi.

3.Member (P&V), Central Board of Excise & Customs, Govt of India, Ministry of Finance, Dept of Revenue, North Block, New Delhi.

4.The Chief Commissioner of Customs & Central Excise, LB Stadium Road, Basheerbagh, Hyderabad.

5.The Commissioner of Customs and Central Excixe, Hyderabad-II Commissionerate, LB Stadium Road, Basheer Bagh, Hyderabad.

6.The Commissioner of Customs and Central Excise, Hyderabad-III Commissionerate, LB Stadium Road, Basheer Bagh, Hyderabad.

7.D. Raghu, S/o. Late D. Narasimhulu, age 34 years, Senior Tax Assistant, Earlier Data Entry Operators Gr.B in Central Excise and Customs Commissionerate situate in A.P. Region.

8.V. Srinivas, S/o. Ramalingam, age 34 years, Senior Tax Assistant, Earlier Data Entry Operators Gr.B in Central Excise and Customs Commissionerate situate in A.P. Region.

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.....RESPONDENTS

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Counsel for the Petitioner: MR.J.SUDHEER

Counsel for the Respondent Nos.1 to 6: MR.ARAJASHEKAR REDDY

(SC FOR CG)

Counsel for the Respondents No.7 to 22: MR. NOOTY RAM MOHANA RAO

WRIT PETITION NO : 20890 of 2004

Between:

Pampana Vijaya Lakshmi, W/o Rayudu Narayana Rao, Age: 37 years, occu: Inspector of Central Excise, Rajahmundry,

C/o Rayudu Finance, Aryapuram, Rajahmundry

..... PETITIONER

AND

1. Union of India rep. by its Secretary, Ministry of Finance

and Company Affairs, Department of Revenue, 152,

Central Board of Excise and Customs, Computer Centre &

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2.The Chairman, Central Board of Excise and Customs, North

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3.Member (P&V), Central Board of Excise & Customs,

Government of India, Ministry of Finance, Dept of Revenue,

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Basheer Bagh, Hyderabad.

6.The Commissioner of Customs and Central Excise,

Hyderabad-III Commissionerate, LB Stadium Road,

Basheer Bagh, Hyderabad.

7.D. Raghu, S/o. Late D. Narasimhulu, age 32 years,

Senior Tax Assistant, Earlier Data Entry Operators

Gr.B in Central Excise and Customs Commissionerate

situate in A.P.

8.V. Srinivas, S/o. Ramalingam, age 32 years,

Senior Tax Assistant, Earlier Data Entry Operators

Gr.B in Central Excise and Customs Commissionerate

situate in A.P.

9.K. Suryakala, S/o. Y. Sanjeeva Reddy, age 33 years,

Senior Tax Assistant, Earlier Data Entry Operators

Gr.B in Central Excise and Customs Commissionerate

situate in A.P. Region.

10.K. Seetha, W/o. Rambabu, age 32 years,

Senior Tax Assistant, Earlier Data Entry Operators

Gr.B in Central Excise and Customs Commissionerate

situate in A.P.

11. T. Padmaja, W/o. Srinivasa Rao, age 33 years,

Senior Tax Assistant, Earlier Data Entry Operators

Gr.B in Central Excise and Customs Commissionerate

situate in A.P. Region.

12.P. Seshu Kumar, S/o. Sundara Ramaiah, age 32 years,

Senior Tax Assistant, Earlier Data Entry Operators

Gr.B in Central Excise and Customs Commissionerate

situate in A.P.

13.N. Subba Raju, S/o. N. Rama Das, age 32 years,

Senior Tax Assistant, Earlier Data Entry Operators

Gr.B in Central Excise and Customs Commissionerate

situate in A.P.

14. K. Sai Prasad, S/o. K. Lingappa, age 32 years,

Senior Tax Assistant, Earlier Data Entry Operators

Gr.B in Central Excise and Customs Commissionerate

situate in A.P.

15.G. V. Satyavathi, W/o. Hanumantha Rao, age 34 years,

Senior Tax Assistant, Earlier Data Entry Operators

Gr.B in Central Excise and Customs Commissionerate

situate in A.P.

16.S. Chandra Sekhar, S/o. Shankar, age 28 years, Senior Tax Assistant, Earlier Data Entry Operators Gr.B in Central Excise and Customs Commissionerate situate in A.P.

17. B. Ramcharan Kumar, S/o. Vijay Kumar, age 33 years,

Senior Tax Assistant, Earlier Data Entry Operators

Gr.B in Central Excise and Customs Commissionerate

situate in A.P.

18. T. Chandrasekhar, S/o. Late Subbarayudu, age 33 years,

Senior Tax Assistant, Earlier Data Entry Operators

Gr.B in Central Excise and Customs Commissionerate

situate in A.P.

19.N.C. Veera Raghava, S/o. N.C.R. Acharya, age 33 years,

Senior Tax Assistant, Earlier Data Entry Operators

Gr.B in Central Excise and Customs Commissionerate

situate in A.P.

20. S. Srinivas, S/o. Mallaiah, age 34 years,

Senior Tax Assistant, Earlier Data Entry Operators

Gr.B in Central Excise and Customs Commissionerate

situate in A.P.

21.M. Srinivasa Reddy, S/o. M.V. Krishna Reddy, age 32 years,

Senior Tax Assistant, Earlier Data Entry Operators

Gr.B in Central Excise and Customs Commissionerate

situate in A.P.

22. M. Vittal Rao, S/o. Venkat Rao, age 33 years,

Senior Tax Assistant, Earlier Data Entry Operators

Gr.B in Central Excise and Customs Commissionerate

situate in A.P.

.....RESPONDENT(S)

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, Order or direction more particularly, one in the nature of a Writ of Certiorari to call for records relating to and connected with the Central Administrative Tribunal, Hyderabad Bench, Hyderabad rendered in O.A.No1362 of 2002 dated 17-02-2004 and to quash/ set aside the same.

Counsel for the Petitioner: MR.RAMESH RANGANADHAN

Counsel for the Respondents: MR.M.RATNA REDDY

-

WRIT PETITION NO : 4444 of 2005

Between:

Isabella Britto w/o Ronald Anthony Kachhap, Aged

About 38 years, occu: Inspector of Central Excise,

Head Quarter (AE), Hyderabad-1 Commissionerate,

R/o 83/A,Srinagar Colony, Secunderabad.

... PETITIONER

And

1. The Secretary rep. by Union of India, Ministry of Finance

and Company Affairs, Department of Revenue, 152,

Central Board of Excise and Customs, Computer Centre &

Project Office, North Block, New Delhi.

2. The Chairman, Central Board of Excise and Customs,

North Block, New Delhi.

3. Member (P &V), Central Board of Excise and Customs,

Government of India, Ministry of Finance,
Department of Revenue, North Block, New Delhi.

4. The Chief Commissioner of Customs and Central Excise,

LB Stadium Road, Basheer Bagh, Hyderabad - 11.

5. The Commissioner of Customs and Central Excise,

Hyderabad – II Commissionerate, LB Stadium Road,

Basheer Bagh, Hyderabad - 11.

6.The Commissioner of Customs and Central Excise,

Hyderabad - III Commissionerate, LB Stadium Road,
Basheer Bagh, Hyderabad - 11.

7. D.Raghu, S/o Late D.Narasimhulu, age 34 years,

8.V.Srinivas, S/o Ramalingam, Age 34 years,

9.K.Suryakala, W/o Y.Sanjeev Reddy, Age 35 years,

10.K.Seetha, W/o Rambabu, Age 34 years,

11.T.Padmaja, W/o Srinivasa Rao, aged 35 years,

12.P.Seshu Kumar, S/o Sundara Ramaiah, Age 35 years,

13.N.Subba Raju, S/o N.Ram Das, age 34 years,

14.K.Sai Prasad, S/o K.Lingappa, age 34 years,

15.G.V.Satyavathi, W/o Hanumantha Rao, age 36 years,

16.S.Chandra Shekar, S/o Shankar, Age 30 years,

17.B.Ram Chara Kumar, S/o Vijay Kumar, Age 35 years,

18.T.Chandrshekar, S/o Late Subbarayadu, age 35 years,

19.N.C.Veera Raghava, S/o N.C.R.Acharya, Age 35 years,

20. S.Srinivas, S/o Mallaiah, age 36 years,

21.M.Srinivasa Reddy, S/o M.V.Krishna Reddy, age: 34 years,

22.M.Vittal Rao, S/o Venkat Rao, age 35 years,

(All the above Respondents No. 7 to 22 are working as Senior Tax Assistants, earlier Data Entry Operators Gr.B in Central Excise and Customs Commissionerate, situated in A.P. Region)

.....RESPONDENT(S)

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, Order or direction, more particularly one in the nature of Writ of Certiorari and to call for the records relating to and connection with Central Administrative Tribunal, Hyderabad Bench, Hyderabad rendered in O.A.No. 1362 of 2002, dated: 17.2.2004 and to quash the same with all consequential benefits.

Counsel for the Petitioner: MR.J. Sudheer

Counsel for the Respondents No.1 to 6: MR.ARAJASHEKAR REDDY

(SC FOR CG)

Counsel for the Respondents No.7 to 22: MR. NOOTY RAM MOHANA RAO

The Court made the following:

COMMON JUDGMENT :

(per G. Bikshapathy J)

1. All the Writ Petitions can be disposed of by a common Order as common questions of law arise in these Writ Petitions.

2 . The Writ Petitions are filed challenging the Order passed by the Central Administrative Tribunal, Hyderabad in O.A.NO. 1362 of 2002, dated: 17.2.2004 and other similar O.As. Petitioners are the unofficial respondents in the O.As. filed before the Central Administrative Tribunal. The applicants before the Central Administrative Tribunal were working as Data Entry Operators Grade-B. They challenged the Recruitment Rules issued in notification dated: 29.11.2002 in so far as they relate to the conditions imposed in clause (a) and Note-1 of clause (b) of Column No.12 of Group 'C' of Recruitment Rules, 2002 for eligibility condition for promotion to the cadre of the Inspector of Customs and Central Excise, providing opportunities to the cadres that were existing prior to the restructure cadre and the restructure process was already effected with effect from 19.7.2001 and for a direction that they should be deemed to have been merged into the cadre of Senior Tax Assistant in the scale of 5000-8000 in pursuance of the letter dated: 19.7.2001 and consequently further direction to the respondents to consider the cases of the applicants for promotion to the cadre of Inspector of Customs and Central Excise by way of 100 per cent promotion under one time relaxation scheme on par with those Assistants, Data Entry Operators Grade-C, Data Entry Operators Grade-B and U.D.C. (Special Pay), who were redesignated as Senio Tax Assistants under the restructured cadre. They

also sought the relief of setting aside the intimation letter dated: 5.11.2002 for conducting the physical tests, interviews for the cadres other than Data Entry Operators Grade-B other than the restructured cadre.

3. The facts leading to the filing of the O.As. before the tribunal are as follows:

In the department of Central Excise and Customs, various cadre posts were created under relevant statutory rules framed under proviso to Article 309 of Constitution of India. The said Rules are called Central Excise and Land Customs Department Group-C Posts Recruitment Rules, 1979 (for brevity "1979 Rules"). The said Rules contained the method of recruitment to the posts in various cadres including the post of Inspectors. The promotion to the post of Inspector under 1979 Rules was by selection from amongst:

> **"i) Upper Division Clerks/Steno Grade-III with five years service.**
>
> **ii) Upper Division Clerks with 13 years of total service.**
>
> **iii) Stenographers (Grade-III) with two years service.**
>
> **iv) Stenographers (Grade II) or Stenographers (Grade III) with 12 years service as Stenographer, Upper Division Clerks and Lower Division Clerk."**

4. The applicants before the tribunal were in the cadre of Data Entry Operators. Initially the recruitment takes place at the stage of Data Entry Operators Grade-A and promotion channels are created to Grade B, C and D. However, it is observed that there was no promotion channel in the executive line for Data Entry Operators and they have been making representations to the Government to create a channel for them as similar channels are available in the other departments under the Ministry of Finance namely Income Tax etc. While so, on 19.7.2001, the Government of India, Ministry of Finance issued a letter to all the Commissioners, Central Excise and Customs etc. to the effect that the Central Government has approved the restructuring of Customs and Central Excise Department, which necessitated change in the number and nomenclatures of various grades/posts. Therefore, accordingly revised the designations of various posts at different levels were

approved. Thus, the decision was taken to restructure the various posts. In the restructured category, the scale of Senior Tax Assistants was revised to Rs. 5,000-5,800 and Tax Assistants to Rs. 4,000-6,000 and strength was fixed at 3,152 and 5,525 respectively. So also in the post of Inspector, while the pay scale continued as 5,500-9,000/-, the sanctioned strength was increased to 18,053.

5. On 5.2.2002, the Government of India issued a circular regarding the allocation of the staff in 'A', 'B', 'C' and 'D' zones, Commissionerates and Directors Generals, and Directorates at different level as approved by the Government in supersession of the earlier allocations. The sanctioned strength as mentioned in the said notification also superseded the earlier sanctioned strength. In Para 8, it has been stated that the detailed instructions/Orders/Recruitment Rules governing the manner of filling up of the vacancies at all levels will be issued separately. No vacancy in respect of the posts included in the cadre restructuring should be filled up till such time as further orders are issued.

6. When the Draft Rules were circulated, the applicants made a grievance to the effect that in the draft Recruitment Rules for Central Excise and Land Customs Department Inspectors (Group 'C' posts), recruitment by selection from those candidates working in the restructured cadre Senior Tax Assistant (S.T.A.) with 2 years regular service in the grade is eligible for promotion as Inspector. Therefore, they stated that as the Recruitment Rules for Senior Tax Inspectors and Assistants were issued in recent time and because of which there was a confusion, which was causing undue hardship. They requested the authorities to grant exemption from passing of the test within two years of the appointment of Inspectors.

7. As the matter stood thus, the department issued interview letters to the candidates and holding the pre-restructured cadre for promotion for the post of Inspectors Group 'B', Data Entry Operators assailing the action filed O.As. before the tribunal seeking relief as referred to above.

8. It is the contention of the applicants before the tribunal that the restructured cadres were deemed to have come into effect from 19.7.2001 and therefore, they are deemed to have designated as Senior Tax Inspectors and since the Rules also stipulated that the period put in by them in the pre-re-structured posts are required to be counted as service for the purpose of promotion, they are also eligible to be considered for promotion as Inspectors. It is also the contention of the applicants that the posts for which the promotion process was initiated were prior to the statutory rules coming into force with effect from 19.7.2001, the vacancies ought to be filled by the restructured cadre as notified in letter dated: 19.7.2001.

9. The matter was resisted by the department as well as the unofficial respondents.

10. It is the case of the respondents in O.A. that the communication of the department letter dated: 5.2.02 regarding the promotion to the post of Inspector was issued to Tax Assistants/Upper Division Clerks/Stenographers of pre-restructured cadres, who were already qualified in the departmental competition examination and eligible for promotion to the post of Inspectors. Therefore, the applicants have no locus standi in asmuch as the selection process was restricted only to the eligible qualified candidates from the pre-restructured cadres. Since the applicants belong to Data Entry Operators Grade 'B', they do not fall in the feeder category and hence their claim was unsustainable.

11. It is also the case of the department that by virtue of the restructuring cadres and merger, the applicants were redesignated as Senior Tax Assistants and therefore, they have to adhere to the procedure prescribed in the Rules. The proceedings of the Board dated: 19.7.2001 is only communication of approval by the Ministry for restructuring and that they did not confer any right on the applicants in the absence of any statutory Recruitment Rules have been framed. The statutory rules came into

force from on 7.2.2002 and under the said statutory rules, the petitioners do not fall within the eligibility criteria. Therefore, it is the contention of the respondents that the applicants have no locus standi. That apart even on merits also no case made out as they did not fulfil the conditions as laid down under the relevant statutory rules.

12. Further, it is also submitted that even in the Recruitment rules, the Data Entry Operators, who were deemed to have been redesignated as Senior Tax Assistants by virtue of the merger are also not entitled to be considered for appointment, in asmuch as, they do not fulfil the crieteria laid down under clause (b) namely that they had not completed two years of service in the regular grade and did not pass the prescribed tests. Even though, it is stated in the cadre Recruitment Rules of Senior Tax Assistants that the Service put in by the merged categories shall be reckoned from the date of their earlier appointments, yet, the Recruitment Rules for Inspector of Central Excise clearly stipulate that the candidate should pass the prescribed test and they should have completed two years of regular service in the grade. Thus, it is submitted that the viewecd from anyangle, Data Entry Operators are not entitled to be considered for promotion.

13. The learned tribunal after considering the respective contentions and taking into consideration the Orders passed by the Administrative Tribunal, Chandigarh, Chennai and Mumbai held that non-consideration of the Data Entry Operators in pursuance of Recruitment Rules was illegal and accordingly clarified that they are also entitled to be considered. Para 16 is the relief portion in all the O.As., which is extracted below:

> **"In the result, this O.A. is allowed in part. The respondents are directed to consider the case of the applicants for promotion under one time relaxation scheme to the post of Inspector of Customs and Central Excise in terms of the relevant recruitment rules taking into consideration the service rendered by them as Data Entry Operators Grade-B, after giving them opportunity to appear in the departmental examination as provided in Note 2 in the schedule to the Inspector Recruitment Rules, 2002. IN case,**

they are successful and are finally selected as Inspectors, as per rules, they should be promoted as Inspectors and assigned suitably seniority vis-à-vis other categories of staff who have already been promoted by virtue of seniority as per the provisions of Rule 5 of the Rules relating to recruitment of Grade-C Senior Tax Assistants in the Central excise and Customs Department. The declaration sought for by the applicants in para 8© of the O.A. is granted as prayed for.

These directions should be complied with, within a period of 3(three) months from the date of receipt of a copy of this Order."

Against the said Orders, the present Writ Petitions have been filed by the candidates other than the Data Entry Operators cadres and also the Government.

14. The prime issues that calls for consideration are as follows:

i. **What is the date of coming into force the Recruitment Rules for S.T.As. and Inspectors of Central Excise?**

ii. **Whether the Posts which were available prior to the date of Recruitment Rules coming into force should be filled up under the Recruitment Rules, 1979 or Revised Recruitment Rules, 2002?**

15. As already noted by us, the Data Entry Operators were forming separate category by themselves and they were governed by separate set of Rules. So also the U.D.Cs., Assistants etc. were equally governed by the separate set of Rules. Under the Recruitment Rules for Central Excise and Customs Inspectors Rules of 1979 issued in G.S.R.742, the method of Recruitment to the posts of Inspectors have been provided. The said method is by direct recruitment or by promotion or by deputation or transfer and percentage of vacancies shall be filled up by various methods 75 per cent by direct recruitment and 25 per cent by promotion. In case of Recruitment by transfer/deputation/transfer, the promotion is effected by:

"Promotion:

By Selection from amongst

(i) Upper Division Clerks with 5 years service,

(ii) Upper Division Clerks with 13 years of total service as UDC and Lower Division Clerk taken together subject to the condition that they should have put in a minimum of two years service in the grade of Upper division Clerks;

(iii) Stenographers 9Senior Grade) with 2 years Service.

(iv) Stenographers (Senior Grade) or Steno (Ordinary Grade) with 12 years service as Stenographer/Upper Division Clerk and Lower Division Clerk if any taken together subject to the condition that they should have put in a minimum of two years service as Stenographer (Ordinary Grade) or Upper Division Clerk.

(v) Woman Searcher with 7 years service in the grade.

(vi) Drafts man with 7 years service in the grade.

Note: 1. Candidates will be required to possess such physical standards and pass such written test and physical tests and confirm to such age limits as may be specified by the Central Board of Excise and Customs from time to time.

2. The eligible officers shall be required to pass through an interview before promotion."

Therefore, as can be seen from 1979 Rules, no channel was created to Data Entry Operators and they were getting promotion in their respective grade A, B,C, D. The communication of the Government of India dated: 19.7.2001, the Government has approved the restructure of the Customs and Central Except Department. Consequently, restructuring of various posts has take place including the number of posts and the nomenclature. I2t is necessary to extract the entire Order as that has been made basis for the entire claim. The said Order reads thus:

"I am directed to say that the Central Government has approved the restructuring of Customs and Excise Department. As a result of restructuring there has been a change in the number of nomenclature of the various grades/posts. The revised number and designation of the various posts at different levels in Customs and Central Excise Department has been indicated in Annexure-'I'

2. All the posts at different levels as per Annexure-'I' stand sanctioned with immediate effect. Wherever there is a reduction in the number of posts at any level, such reduction will be effective after the existing incumbents of the posts are promoted to the higher level or the post fall vacant on account of retirement etc. The number of categories of the posts other than those referred to in Annexure 'I' have been kept in their existing strength and in their existing pay scales only.'

3. No direct recruitment may be made to the various grades for the year 2001-2002 without approval of Ministry/Department as the Cabinet has approved a one time relaxation for filling of all vacancies by promotion in all Cadres."

4. to 6. xxx xxx xxx"

16. Annexure-I is extracted to the extent required:

REVISED NUMBER OF POSTS AT DIFFERENT LEVELS IN THE CUSTOMS AND CENTRAL EXCISE DEPARTMENT ON RESTRUCTURING

S.NO. Post Existing Pay Post Redesignated Pay scale sanctioned

Scale as strength

'C' EXEC.

10. INSPECTOR/PO/ 5500-9000 INSPECTORS 5500-9000 18053

'C' MIN

19. SR.TAX ASSISTANT NEW 5000-89000 3152

20. TAX ASSISTANT NEW 4000-6000 5525

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17. The Government of India restructured the various cadres as referred to above and it has been clarified that the restructure cadre of Inspectors (Central Excise), Inspector (Preventive Officers) and Inspectors (Examiners) came into force from 7.12.2000 i.e. publication of the Recruitment Rules. Similarly, restructure cadre of Senior Tax Assistants came into existence from 20.1.2003 i.e. from the date of publication of the Recruitment Rules. This was clarified by the Government by a letter dated: 21.2.2003. The Central Excise and Customs Department Inspector (Group- C) post Recruitment Rules, 2003 have come into force from 7.12.2002 on

which date they were published in the gazette. The method of recruitment, age limits, qualification and other matters relating to the said post has been specified in the Schedule. It is necessary to extract the relevant portion, which reads thus:

> **"1. Short title and commencement:- (i) These rules may be called the Central Excise and Land Customs Department Inspector (Group 'C' posts) Recruitment Rules, 2002.**
>
> **(ii) they shall come into force on the date fo their public in the Official Gazette.**
>
> **(2) XXX XXX**
>
> **(3) Method of Recruitment, age limit, other qualification etc. :- The method of recruitment, age limit, qualification and other matters relating to the said post shall be specified in columns. 5 to 14 of the said Schedule.**
>
> **(4) to (7) xxx xxx**
>
> **SCHEDULE**
>
> **(1) to (10) xxx xxx**
>
> **----------**
>
> **Method of recruitment In case of recruitment by promotion**
>
> **Whether by direct re- deputation/absorption grade from when**
>
> **cruitment or by pro- promotion/deputation/absorption to be**
>
> **motion or by deputa- made.**
>
> **tion/transfer and per-**
>
> **centage of the vacan-**
>
> **cies to be filled by**
>
> **various methods**
>
> **(11) (12)**
>
> **----------**
>
> **66 2/3% by direct Promotion:**
>
> **recruitment (a) By selection from those candidates working**
>
> **33 1/3% by in the following prestructured cadres:**
>
> **promotion**
>
> **(i) Tax Assistants with 7 years service as Tax**
>
> **Tax Assistants or 7 years service as Tax Assistant and Upper Division Clerk put together.**
>
> **(ii) Upper Division Clerk or Stenographer Grade III with 5 years service.**
>
> **(iii) Upper Division Clerk with 13 years of total service as Upper**

Division Clerk and Lower Division Clerk taken together subject to the condition that they should have put in a minimum of 2 years service in the grade of Upper Division Clerk

(iv) Stenographer Grade II with 2 years service.

(v) Stenographer Grade II or Stenographer Grade III with 12 years service as Stenographer or Upper Division Clerk, if any taken together subject to the condition that they have completed maximum of 2 years service as Stenographer Grade III or Upper Division Clerk.

(vi) women searcher with 7 years service in the Grade.

(vii) Draftsman with 7 years service in the grade.

(b) By selection from those candidates working in the following restructured cadre:

(i) Senior Tax Assistants with 2 years regular service in the grade.

(ii) Stenographer Grade II with 2 years regular service in the grade.

(iii) Women searcher with 7 years service in the grade.

(iv) Draftsmen with 7 years service in the grade.

c. **Failing the method of recruitment specified under clause (b) above, by selection from these candidates working as Tax Assistants, Stenographer Grade III having not less than 10 years service including the service to be included for this purpose under the provisions of the rules regulating the method of recruitment to the post of Tax Assistant.**

Note:1: Promotion under Clause (b) above shall be only operative for a period of two years from the date on which the restructured cadres mentioned under Clause (b) above comes into existence.

The service rendered under the new grade in the restructured cadres shall be operated towards considering the eligible for promotion under Clause (a) above.

Note 2: Candidates shall be required to pass such written test as may be determined by the Central Board of Excise and Customs from time to time. The maximum age of eligible for the departmental candidates shall be 45 years, which shall be relaxable to 47 years in the case of candidates belonging to the Scheduled Castes or Scheduled Tribes category. However, those of the officials who were not considered for such promotion upto the

age of 45 or 47 years, as the case may be, shall be granted the benefit of relaxation in age limit up to 50 years in order to enable a fair opportunity of a minimum of two years therefrom. More over, those officials who were considered for promotion upto the age limit of 45 or 47 years as the case may be, on two or more occasions and were not found fit for promotion shall not be eligible for this relaxation.

Note 3: Candidates shall be required to pass physical test and confirm the physical standards as specified in Column 1.

Note 4: The eligible officers under Clause (a), (b) and (c) above shall be required to pass through an intention before promotion.

Note 5: Where juniors who have completed their qualifying or eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying or eligibility service by more than half of such qualifying or eligibility ser of two years, whichever is less and have successfully completed their probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying or eligible service.

13) and 14) xxx xxx xxx"

So also, the Central Excise and Customs Department, Senior Tax Assistants (Grade-C) Post Rules, 2003 came into force from 20.1.2003. Rule 5 contains the initial constitution, which reads thus:

"5. Initial Constitution:- (i) All the persons appointed on the regular basis at the time of commencement of these rules to the Cadre of Assistant Tax Assistant Upper Division Clerk (Special Pay), Data Entry Operator Grade B and C shall be deemed to have been appointed as Senior Tax Assistants under these rules. The service rendered by them before commencement of these rules shall be taken into account for deciding the eligibility for promotion to the next higher grade.

(ii) Assistants (Rs. 5000-8000) and Data Entry Operator Grade 'C' (Rs.5000-8000) are being redesignated as Senior Tax Assistants in the same scale of pay. Therefore, the Assistants and Data Entry Operator Grade 'C' shall be placed on block senior to the other categories. However, their inter-se-placement shall be done according to the date from which they had actually been appointed to these grades on regular basis subject to the condition that their inter-se placement in their respective category shall not be altered.

(iii) The Data Entry Operator Grade 'B' (4500-7000) and Tax Assistants (4500-7000) have been placed in their higher scale of 5000-8000 and they shall be placed below the Assistant and Data Entry Operator Grade C and their inter-se placement shall be fixed in accordance with the date of regular appointment to the respective grade subject to the condition that their inter-se placement in respective category shall not be disturbed.

(iv) Upper Division Clerk with special pay shall be placed below Assistant; Data Entry Operator Grade 'C', Data Entry Operator Grade B Tax Assistants.

(v) The present employees would be required to pass the required or suitable departmental examination, as specified by the Competent Authority, from time to time in Computer application and relevant procedure within two years failing which they would not be eligible for further increments."

It has to be considered from the above set of Rules as to whether these rules can be said to be given effect to from the date of publication in the official gazette or earlier. It is the prime contention of the Data Entry Operators that the Rules shall be deemed to have come into force from 19.7.1991 when the Cabinet was taken a decision. But, we do not find any warrant for such a contention, which appears to have been accepted by the tribunal. It has been specifically stated in the Rules shall come into effect from the date of the publication in the official gazette. If that is the situation, the rules ought to have been given retrospective from 19.1.1997 and nothing prevented the Government to give retrospective effect from 19.1.1997. No doubt in the Constitution of Senior Tax Assistants, it has been specifically stated that the Tax Assistants, Upper Division Clerks Special Pay) Data Entry Operators Grade-B and C shall be deemed to have been appointed as Senior Tax Assistants under the Rules and their services rendered by them before commencement of the Rule shall be taken into account for giving promotion to the next higher grade. Even in Rule 5, the modality for preparing seniority inter se Assistants, Data Entry Operators Grade-C and Tax Assistants and Upper Division Clerks etc. have been stipulated.

18. It has been contended by the learned counsel for the writ petitioners Mr. D.

Prakash Reddy and Mr. Ramesh Ranganadhan that the cadre itself was found from the date of coming into force the concerned Rules and therefore, it cannot be stretch under any circumstances to give effect Rules with retrospective effect. That would be reading something in the rule, which is not available. Merely because, the Union Cabinet has decided merger, it cannot be said that the said decision has a statutory force. A decision taken by the Union Cabinet is an administrative decision. Unless it has given a statutory effect in the relevant Recruitment Rules, we do not find any ground to hold that the Rules must be given effect from 19.1.1997. It is a well-settled canon of interpretation that the statutory provision has to be interpreted in the language in which it is expressed by the Legislation. But, it is not open for the Courts to supplement by other interpretations and when the language is clear, specific and unambiguous, the interpreting contrary to the language of the statute would be doing violation to the provision. A larger Bench of this Court which one of us (GBJ) was a party elaborately discussed this issue in VALLABHANENI LAKSHMANA SWAMY Vs. VALLURU BASAVAIAH and held in para 62 thus:

> **"62. From the aforesaid case law and the statements made by various Law Lords, the following principles (illustrative not exhaustive) would emerge:**
>
> **1. Every Legislation is a prima facie prospective unless it is expressly or by necessary implication made to have retrospective effect on the principle of *"Nova constitutio futuris formam imponere debet now paranteritus"* means – A new law ought to regulate which is to follow, not the past.**
>
> **2. All laws which effect substantive rights generally operate prospectively and there is a presumption against their retrospectivity if they affect the vested right and obligation unless the legislative intends its clear and unambiguous.**
>
> **3. While considering the question of retrospective operation of the statute, the right affected must be first considered, whether there is a vested right. The amendment must be considered as a prospective so as to not to cause vested right and if the right is merely procedural, normally it is not treated as a vested right.**

4. The intention of the Legislature is always be to gather the words always used by it in plain, grammatical meaning.

5. Retrospective operation of a statute is not to be given so as to impair the existing right or obligation, otherwise than as regards a matter of procedure, unless that effect cannot be effected without doing violence to the knowledge of the enactment. A statute, which impairs vested right or legality of the past transactions or the obligation of a contract should not be held to be retrospective.

6. Even in respect of the amendments, substantive rights cannot be taken away by subsequent amendment, unless specifically enacted by the Legislation.

7. The law which only affects the procedural rights is presumed to be retrospective, unless such a construction is textually inadmissible.

8. A statute, which not only changes the procedure, but also creates new rights and obligations, shall be construed to be prospective unless otherwise provided either expressly or by necessary implication.

9. Whether the amendment is brought during the pendency of the suits or actions, whether such amendment has retrospective effect or prospective effect has to be considered with reference to object of the amendment, unless it is expressly provided in the statute. But, however, if the rights and procedures are dealt with together, if the procedural alterations are inextricably linked with the changes simultaneously, it is not permissible to give retrospective effect of operation. Unless, Legislature has enacted such an intention, there is always general presumption that the statute is deemed to be prospective unless otherwise expressly provided.

10. The question whether statute or any provisions in it has retrospective operation has to be determined with reference to the intention of the Legislation and it is to be gathered from the language with reference to the object and nature of the rights affected the circumstances under which the statute came to be. The statute which is not declaratory of pre-existing law nor the matter relating to procedure, but affects vested rights cannot be

given a greater prospective, retrospective effect than it renders necessary. The test when decided a particular provision of law has to be given retrospective effect or not is not merely considered whether a law of procedure or substantive law, but also any alleged questions existing rights including the rights of action which are substantive rights. If a law destroys an existing right or places language a restriction on it, no retrospective effect would be given unless statute is expressly enacted to that effect.

11. No person can have a vested right in the course of procedure and the plaintiff or defendant has a right of prosecution or defence in the manner prescribed for the time being and if the procedure is altered during the pendency of action, the altered procedure ought to be adopted. Legislature can always provide that pending proceedings shall be effected by an amendment Act, though in the absence of such any express provision amending Act cannot be held to be govern the pending proceedings.

12. A new law bringing about a change in forum does not affect pending actions unless there is clear expression to the said effect.

13. Right of appeal is substantive right and it cannot be impaired as taken away by a statute retrospectively unless by specific provision in enactment or by necessary intendment. This right vests with the suitor at the time of institution of original proceedings. Any change in the law relating to appeals after institution of original proceedings which adversely touches this right is presumed not to be retrospective.

14. A change of forum except in pending proceedings is a matter of procedure and therefore, if a new Act requires certain type of original proceedings to be instituted before a special tribunal constituted under the Act to the exclusion of Civil Court, all proceedings of that type whether based on old or new causes of action will have to be instituted before the tribunal

15. The statutes providing for new remedies for enforcement of

a existing right are treated as procedural and applied to future as well as the past causes of action.

16. The classification of statute as either substantive or procedural does not necessarily determine whether it may have a retrospective operation. But, a statute of limitation is generally regarded as procedural. However, if its application to a past cause of action has effect of reviving or extinguishing a right of suit such an operation cannot be said to be procedural. Consequently such procedural law is prospective in operation.

17. In the words of DIXON C.J. "The general rule of the common law is that a statute changing the law ought not, unless the intention appears with reasonable certainty, to be understood as applying to facts or events that have already occurred in such a way as to confer or impose or otherwise affect rights or liabilities which the law had defined by reference to the past events. But, given rights and liabilities fixed by reference to the past facts, matters or events, the law appointing or regulating the manner in which they are to be enforced or their enjoyment is to be secured by judicial remedy is not within the application of such a presumption"

18. In the words of S.R.Das, the cardinal rule of construction, however, in the absence of any thing in the enactment to show that it has a retrospective operation, it cannot be so construed as to have altering the law applicable to a claim in litigation at the time when the Act was passed. Therefore, if Legislature intends to apply a statute to the pending proceedings, it must indicate an express provision to that effect.

19. In matters of substitution by an amendment, it has to be construed that there is not real distinction between the repeal and an amendment. Whether a provision of an Act is omitted by an Act and the said Act simultaneously re-indicates new provision which substantively covers with certain modifications. In that event, such re-enactment is recorded as having force continuously and modification are treated as changes with effect from the date of the enforcement of the re-enacted provision.

20. It makes no difference in application to these principles that the amendment is by substitution or otherwise. However, the statutes dealing with the procedures in contrast with the substantive rights are presumed to be retrospective, unless such a conclusion is textually inadmissible. If the new Act

affects the matters of procedure, then only prima facie it applies to all actions pending as well as future.

21. While the law relating to forum and limitation is procedural in nature while the law relating to right of action and right of appeal even though remedial is substantive in nature, that a procedural statute should not generally be speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished. A statute which not only changes the procedure but also creates new rights and obligations shall be construed to be prospective, unless otherwise provided either expressly or by necessary implication.

22. A statute which takes away or impairs vested rights acquired under existing laws, or creates a new obligation or imposes a new duty or attaches a new disability in respect of transactions already past must be presumed to be intended not to have a retrospective effect and as a logical corollary of the general rule, that retrospective operation is not taken to be intended unless that intention is manifested by express words or necessary implication, and there is a subordinate rule to the effect that a statute or a Section in it is not to be construed so as to have larger retrospective operation than its language renders necessary.

23. Where the rights and procedure are dealt with together, the intention of Legislature may well be that old rights are to be determined by the old procedure and the new rights under substituted Section by the new procedure. If the procedural alteration is closely and inextricably linked with the changes simultaneously introduced, it is not possible to give retrospective effect to the procedure unless the Legislature has indicated such an intention either by express words or by necessary implication."

19. Admittedly, the Data Entry Operators were in the restructure category of Senior Tax Assistants and the Tax Assistants and they were given the promotional avenues in the cadre of Inspectors along with the other cadres, which were existing even prior to the restructured cadres. Therefore, when the recruitment rules came into force

with effect from 20.1.2003, the same have to be given effect from the said date and question of creating legal fiction so as to give retrospective is wholly unwarranted. It may be true that they are deemed to have been redesignated as Senor Tax Assistants from 20.1.2003, it cannot be said that they were deemed to have been appointed from 1997, the date when the decision was taken by the Cabinet on the premise that the service rendered by them is counted in the category of Senior Tax Assistants. In that case, it should be counted from the date when they were promoted as Data Entry Operator Grade-B. It is also not the case of Data Entry Operators that they were given restructure scale from 19.1.1997 and the limited benefit i.e. conferred by the Data Entry Operators that the service rendered by them in the pre-restructure cadre is counted for the purpose of promotion to higher cadres and for fixation of seniority inter se merged cadres. Except that benefit by legal fiction, no other benefit was conferred under the Rules. Under those circumstances, we have to necessarily hold that the finding of the Central Administrative Tribunal that the Recruitment Rules in respect of the Inspector as well as S.T.A. should be given effect from 19.7.1997 is illegal and runs counter to the settled principles of interpretation statutes. Therefore, we accordingly set aside the finding and hold that the Rules in respect of the S.T.A. and Inspectors shall be deemed to have come into force only from the date of publication of the Rules in the Gazette namely with effect from 20.1.2003 and 7.12.2002 respectively.

20. The next issue that calls for consideration is whether the vacancies which were available prior to the restructure cadre came into force should be filled up by the pre-existing rules or revised recruitment rules. We need not labour on this aspect. Since we held that the Recruitment Rules are only prospective in nature and cannot be said to have come into force with effect from 19.7.1997, the principle laid down in Y.V. RANGAIAH Vs. J.SRINIVAS RAO and reiterated the judgments reported in P. GANESHWARA RAO Vs. STATE OF A.P., P.MULUGESAM Vs. STATE OF TAMIL NADU, P. MAHENDRAN Vs. STATE OF KARNATAKA, N.T. DEVEN KATI Vs. KARNATAKA PUBLIC SERVICE COMMISSION and STATE OF RAJASTHAN Vs.

R. DAYAL will govern the situation. Under those circumstances, it has to be necessarily held that the vacancies which arose prior to revised Recruitment Rules came into force have to be filled up by the then existing rules and not the amended rules.

21. It is sought to be contended that the very purpose of restructuring, creating and enhancing the number of posts and also making a provision 100 per cent in promotion as one time measure would be defeated if rules are not given retrospective effect. This contention also cannot be accepted as making promotional 100 per cent avenues for in-service candidate and stopping recruitment are all the administrative decisions and that when once the statutory rules have been given prospective effect, they cannot be interpreted any different manner because of the administrative decision taken by the Government.

22. In the instant case, the interview letters given to the candidates of prerestructured cadre were challenged along with the draft Recruitment Rules. But, since the vacancies arose prior to the Recruitment Rules necessarily they have to be filled up by 1979 Rules and the Data Entry Operators cannot be said to have acquired any right to be considered for promotion in asmuch as they came into the newly formed cadre only in January, 2003, whereas the vacancies arose much prior to that date.

23. The learned tribunal has gone into the interpretation of the rules and referring to the judgments of the other tribunals held that the Data Entry Operators are also entitled to be considered for promotion. But, in view of our finding referring to above, we need not consider this aspect as to whether Data Entry Operators are entitled for promotion under the new Rules. That situation arises only in respect of the posts that would arise after the new Recruitment Rules for which the procedure has been laid down in the Recruitment Rules have to be followed. However, we note from the judgment of the tribunals and also the Bombay High Court that the promotions can be effected from the posts falling in A, B, C. Similarly, there was no prohibition to

consider the cases of the Data Entry Operators who got merged as Senior Tax Assistants taking into consideration their services as Data Entry Operators for the purpose of promotion. But, we are not faced with the situation as we are concerned with the filling up of the posts from the date the Rules coming into force. But, the learned counsel for the petitioner could submit that these Data Entry Operators who were merged in the Senior Tax Assistants are also not eligible as they did not completed two years of service in the regular grade and that they have also not passed the prescribed test. Further, their probation was also not declared. On the other hand, the Government of India clarified that in respect of the U.D.C. and other cadres other than the Data Entry Operators their probation need not be declared once again in the cadre of S.T.A. while in case of Data Entry Operators they have to be confirmed in the new grade. They referred to the clarification issued by the Government of India dated: 7.1.2005 extracted to the extent required:

CLARIFICATION SOUGHT:	**CLARIFICATION:**
Most of the erstwhile UDCs/DEOs LDCs appointed as STA/TA have completed probation in the entry grade and have been declared con- firmed before restructuring. Hence, there may not be any need to pass departmental examination for confirmation again (C.C.Vadodara)	As per DOP & T instructions confir-mation is to be made only once in the service of an official which will be in the entry grade. Hence, TAs/ STAs who were promoted from LDCs and UDCs and have already cleared exam need not appear again. However, DEOs are required to appear for Departmental examination for confirmation since DOP&T's instructions O.M.No.18011/3/88-Estt(D) dated: 24.09.1992 provide that "Further confirmation in the new entry grade becomes necessary because the new post may not be in the same line or discipline as the old post in which he has been confirmed and the fact that he was considered suitable for continuance in the old post would not automatically make him suitable for continuance or confirmation in the new post, the job required of which may be quite different from those of the old post."

We are not inclined to consider this point on hypothetical issue.

24. For the reasons stated above, we hold that the Order of the tribunal is not sustainable and accordingly it is set aside. The department is directed to fill up the vacancies in the cadre of Inspector of Excise in respect of the vacancies which arose prior to 7.12.2002 in accordance with the 1979 Rules. If any promotions are held up or kept in abeyance, they shall be given effect forthwith. However, it is made clear that we are not deciding the issue as to how the posts of Inspector should be filled up from the restructured cadre of Senior Tax Assistants in respect of the vacancies that arose after 7.12.2002.

25. Writ Petitions are accordingly allowed. No costs.

_____

G.BIKSHAPATHY, J

26. While agreeing with my learned brother, I wish to add a few sentences further.

27. Heard Sri Prakash Reddy, Sri Ramesh Ranganathan, Sri Nuty Ram Mohan Rao, Sri Ratna Reddy, Senior Standing Counsel for Central Government and the other Counsel on record.

28. The simple controversy which falls for consideration is whether Senior Tax Assistants, hereinafter in short referred to as “STAs” drawn from the cadre of Data Entry Operators, hereinafter referred to as “DEOs, Grade-B” are entitled to be considered for promotion to the post of Inspectors, Central Excise, along with Upper

Division Clerks, hereinafter referred to as “UDCs” of pre-restructured cadre or they may have to wait for two years after restructuring of the cadres of STAs coming into being. Several of the facts dealt with in detail need not be repeated again. The factual backdrop, the rival contentions of the parties, the applicability and interpretation of Columns 12(a) and 12(b) of the Schedule relating to the Rules regulating the method of recruitment to Group ‘C’ posts of Inspectors in the Central Excise and Land Customs Department, the process having began prior to the present Rules coming into force and the binding nature of the decision of the Division Bench of Bombay High Court in W.P.No.6957 of 2003 as against which S.L.P. was preferred which also had ended in dismissal, Rule 5(2) of the Rules and the Judgments of Central Administrative Tribunal-other Benches and the applicability of the amended Rules and the old Rules and the principles laid down in Y.V. Rangaiah’s case (2nd cited supra) and the nature of the executive order and the impact and the effect thereof in relation to the Rules made under Article 309 of the Constitution of India and the stand taken by the unofficial respondents being upheld by the Apex Court by putting the seal of approval by the dismissal of S.L.P. and its binding nature on this Court, had been well high-lighted by the Counsel representing the parties in elaboration.

29. Rule 4 of the Central Excise and Land Customs Department Group-C posts Recruitment Rules 1979 provided the method of recruitment to certain posts inclusive of the posts of Inspectors. The promotion to the post of Inspectors under the said 1979 Rules had been by selection from among (i) U.D.Cs./Steno Grade-III with five years service, (ii) Upper Division Clerks with 13 years of total service (iii) Stenographers (Grade-III) with two years service, and (iv) Stenographers (Grade-II) or Stenographers (Grade-III) with 12 years service as Stenographer, Upper Division Clerk and Lower Division Clerk. Hence, the Data Entry Operators were not one among the feeder categories for promotion. The office of the Commissioner of Customs and Central Excise, Hyderabad issued order dated 5-11-2002 relating to promotion to the post of Inspector of Central Excise. The successful candidates were required to undergo physical and endurance test and appear for interview on 7-11-

2002. In pursuance of the interview dated 7-11-2002 the writ petitioners had been selected for promotion to the post of Inspectors but however the orders could not be issued in their favour by virtue of interim orders passed by the Central Administrative Tribunal, hereinafter referred to as “Tribunal”. The Central Excise and Land Customs Department Group-C posts Recruitment Rules 2002 were made in supercession of the 1979 Rules referred to supra which came into being on the date of their publication in Gazette on 8-12-2002. In Column 12, promotion to the post of Inspector is shown to be by way of selection from candidates in various categories including those working in the pre-restructured cadres of Tax Assistants with two years service as Tax Assistant or U.D.Cs., Stenographers etc. Note 2 thereunder specifies that the candidates should pass such written test as may be determined by the Central Board of Excise and Custom, for short “CBEC”. The selections for promotion to the post of Inspectors had been held in November 2002 to fill up vacancies in the posts of Inspectors which arose prior to coming into force of 2002 Rules referred to supra. The Central Excise and Customs Department Senior Tax Assistants (Group-C posts) Recruitment Rules 2003 were notified in the official Gazette on 20-1-2003 and the same came into force from the date of publication in official Gazette on 20-1-2003. Several of the other details need no repetition.

30. The contentions in substance of the writ petitioners in these Batch of Writ Petitions may be summarized as hereunder :

1. **The vacancies of Central Excise Inspectors which had arisen prior to the present Rules coming into force to be filled up by following the Rules of 1979 only.**

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2. **The Judgment made by the Division Bench of the Bombay High Court in W.P.No.6957 and 6958 of 2003 had not been correctly decided.**

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3. **Though the matter was carried by way of S.L.P. inasmuch as the dismissal of S.L.P. is not by a reasoned order the same cannot be said to be a binding precedent nor Article 141 of the Constitution of India would come into play. Even otherwise to get promotion one may have to clear the Departmental tests. Further specific stand was taken that even**

otherwise the Data Entry Operators Grade-B may have to put in the minimum two years of service and till then they would not become eligible for promotion. In substance, the unofficial respondents had taken a stand that the principles laid down in Y.V. RANGAIAH Vs. SRINIVASA RAO (1 supra) supra need not be applied inasmuch as the facts are distinguishable.

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4. **On 19-9-2002, the CBEC through its notification made the position clear to await further orders from it before promotions could be effected. Earlier thereto on 5-6-2002 the CBEC made it clear that all the Commissionerates in the country to await for further instructions, orders, recruitment Rules which are being finalized to be notified shortly, and hence there was no clearance whatsoever from CBEC to Hyderabad Commissionarate to effect promotions in favour of writ petitioners on 31-12-2002.**

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5. **The Judgment of the Bombay High Court referred to supra had attained finality inasmuch as the Apex Court also had put the seal of approval by dismissing the S.L.P. and hence the same is a binding decision. The correspondence in this regard also had been referred to in detail.**

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31. These Writ Petitions are filed by the unofficial respondents in O.A.No.1362/2002 on the file of the Tribunal, Hyderabad Bench and other similar O.As. also had been filed on the file of the said Tribunal. It may be relevant to have a look at para-16 of the order made in O.A.No.1362/2002 dated 17-2-2004 of the Tribunal, Hyderabad Bench wherein it was stated :

> **"In the result, this O.A. is allowed in part. The respondents are directed to consider the cases of the applicants for promotion under one time relaxation scheme to the post of Inspector of Customs and Central Excise in terms of relevant rules taking into consideration the service rendered by them as Data Entry Operators, Grade-B after giving them opportunity to appear in the Departmental examination as provided in Note 2 in the Schedule to the Inspector, Recruitment Rules, 2002. In case, they are successful and are finally selected as Inspectors, as per rules, they should be promoted as Inspectors and assigned suitably seniority vis-à-vis other categories of staff who have already been promoted by revision of seniority as per the provisions of Rule 5 of the Rules relating to recruitment of Grade-C Senior Tax Assistants person the Central Excise and Customs**

Department. The declaration sought for by the applicants in para 8(c) of the O.A. is granted as prayed for."

Similar directions had been issued in the other O.As. too. The proceeding dated 19-7-2001 reads as hereunder :

"F.NO.A-11019/72/99 Ad.IV.
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
CENTRAL BOARD OF EXCISE & CUSTOMS
New Delhi, Dated : July, 19, 2001

To

All Chief Commissioners of Central Excise at Customs,

All Chief Commissioners of Customs

All Directors General

All Commissioners of Central Excise/Customs/Directors under CBEC

Subject :- Restructuring of Customs & Central Excise Department.

Sir,

I am directed to say that the Central Government has approved the restructuring of Customs & Central Excise Department. As a result of restructuring there has been a change in the number and nomenclature of the various grades/posts. The revised number and destination of the various posts at different levels in Customs and Central Excise Department has been indicated in Annexure-I.

2 . All the posts at different levels as per Annexure-I stand sanctioned with immediate effect. Wherever there is a reduction in the number of posts at any level, such reduction will be effective after the existing incumbents of the posts are promoted to the higher level or the post fall vacant on account of retirement etc. The number of categories of the posts other than those referred to in Annexure I have been kept in their existing strength and in their existing pay scales only.

3. No direct recruitment may be made to the various grades for the year 2001-2002 without approval of Ministry/Department as the Cabinet has approved a one time relaxation for filling of all vacancies by promotion in all Cadres.

4. The formation wise distribution of posts at different levels will be notified separately.

5. The details of the Other Posts that have been included in the Restructuring proposal but have not been proposed to be altered on the scale or strength are included in Annexure-II.

6. The Cadres/Post which have not been included in the Restructuring proposal are stated in Annexure-III.

This issues in pursuance to the approval conveyed vide Cabinet Secretariat Notification No.28/CM/2001 (i) dated 16-07-2001.

Yours faithfully,

Sd/-

(K.C.Jain)

Dy.Secretary to the

Government of India"

The other relevant proceedings which may be usefully referred to in this regard are Lr.C.No.II/3/21/2002 Con.Sec. dated 5-11-2001,Lr.C.No.II/34/9/2002-E, dated 5-8-2002, Lr.C.No.2/2002-DEOs dated 3-3-2002, Lr.C.No.II/34/4/2002-E, dated 21-10-2002,Lr.C.No.II/34/5/2002-E,dated:21-10-2002, Lr.C.No.II/ 3/16/2002-Con.Sec. dated 5-11-2002, Lr.C.No.II/03/52/2002-Estt. dated 5-11-2002, Lr.C.No.8/2002-DEOs dated 8-11-2002. Lr.C.No.II/3/21/2002 Con.Sec. dated 5-11-2001, reads as hereunder :

OFFICE OF THE COMMISSIONER OF CUSTOMS AND CENTRAL EXCISE, HYDERABAD-I COMMISSIONERATE

KENDRIYA SHULK BHAVAN, LAL BAHADUR STADIUM ROAD

BASHEERBAGH, HYDERABAD-500 004.

CIRCULAR

C.No.II/3/21/2002 Con.Sec. Dated the 5 November, 2001

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Sub: Con.Sec. – Cadre Restructuring – Selection of Tax Assistants/Upper Division Clerks/Stenographers Grade-II/III for promotion to the post of Inspector of Central Excise – Regarding.

*****

It is proposed to hold physical test for selection of Tax Assistants/Upper Division Clerks/Steno Grade-II & III for promotion to the post of Inspector of Central Excise on 07.11.2002. In this connection the officers as per the list enclosed are hereby directed to report at 9.00 AM at Hqrs. Office of Hyderabad-I Commissionerate.

Physical and endurance standard required for passing the physical test are as follows :

1. Physical standards (Minimum)

Height : 157.5 Cms. | Relaxable by 5 Cms. in
| case of Gharwalis,
Chest : 81.0 Cms. | Assamese, Gorkhas
(with minimum expansion |and Members of
of 5 claims.) | Scheduled Tribes
For lady Candidates :

Height : 152 Cms. | Height relaxable by 2.5 Cms.
Weight : 48 Kgs. | and weight relaxed by 2 Kgs.
| for Assamese, Gorkhas and
|members of Scheduled Tribes

2. Physical Tests

Cycling : 8 Km. in 30 minutes
Walking : 1600 Meters in 15 Minutes.
For Lady Candidates :
Cycling : 3 Km. in 25 minutes
Walking : 1 Km. in 20 minutes

(Dr.H.B.PRADHAN)

ADDL. COMMISSIONER (P&V)

Lr.C.No.II/34/9/2002-E, dated 5-8-2002 reads as hereunder:

OFFICE OF THE COMMISSIONER OF CUSTOMS AND CENTRAL EXCISE, HYDERABAD-III COMMISSIONERATE

KENDRIYA SHULK BHAWAN

L.B. STADIUM ROAD :: BASHEERBAGH

HYDERABAD-500 004.

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Lr.C.No.II/34/9/2002-E Dated : 5-8-2002

Sub : Establishment – Seniority list of Data Entry Operators (Grade 'B') of Central Excise, Hyderabad-I/II/III/Guntur and Vizag Commissionerates common cadre as on 01.01.2002 – Reg.

***

The Seniority list of Data Entry Operators – Grade B, in the common cadre of Hyderabad-I, Hyderabad-II, Hyderabad-III, Guntur and Vizag Commissionerates as on 01-01-2002 on the basis of the orders in force is forwarded herewith for information and circulation among the Officers concerned. The particulars incorporated in the list may please be checked with the Service Books of the individuals concerned and a report of the verification may be sent to this office within one month from the date of receipt of this list.

If any of the Officers want to submit a representation, they may be directed to submit their representation within 30 days from the receipt of the Seniority list. Representations received after stipulated date will not be entertained.

Sd/-

(K.R.N. CHARY)

JOINT COMMISSIONER (P&V)

Lr.C.No.II/34/5/2002-E, dated 21-10-2002 reads as hereunder :

OFFICE OF THE COMMISSIONER OF CUSTOMS AND CENTRAL EXCISE, HYDERABAD-III COMMISSIONERATE

KENDRIYA SHULK BHAVAN

L.B. STADIUM ROAD : : BASHEERBAGH

HYDERABAD- 500 004.

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Lr.C.No.II/34/5/2002-E dated : 21.10.2002

Sub : Establishment – Seniority list of Tax Assistants of Central

Excise of Hyderabad-I, Hyderabad-II, Hyderabad-III, Guntur and Vizag Commissionerates common cadre as on 01-01-2002 – Reg.

***

The Seniority list of Tax Assistants in the common cadre of Hyderabad-I, Hyderabad-II, Hyderabad-III, Guntur and Vizag Commissionerates as on 01-01-2002 on the basis of the orders in force is forwarded herewith for information and circulation among the Officers concerned.

The seniority list is issued incorporating the particulars as on 01-01-2002 and the changes/amendments finalized after 01-01-2002 shall be incorporated in the seniority list to be issued as on 01-01-2003.

If any of the Officers want to submit a representation, they may be directed to submit their representation within 30 days from the receipt of the Seniority list. Representations received after stipulated date will not be entertained.

(K.R.N. CHARY)

JOINT COMMISSIONER (P&V)

Lr.C.No.II/3/16/2002-Con.Sec, dated the 5th November, 2002, reads:

OFFICE OF THE COMMISSIONER OF CUSTOMS AND CENTRAL EXCISE, HYDERBAD-II COMMISSIONERATE AT LAL BAHADUR STADIUM ROAD :: BASHEERBAGH : HYDERABAD-500 004.

***

Lr.C.No.II/3/16/2002-Con.Sec. Dated the 5th November, 2002

The Joint/Deputy/Assistant Commissioner,

Customs and Central Excise,

D-II Division/Cuddapah/Anantapur/

Kurnool/A.C.C./I.C.D./C.W.C./C.F.S.

Sir/Madam,

Sub: Con.Sec. – Cadre Restructuring – Selection of Tax Assistants/Upper Division Clerks/Stenographers Grade-II/III for

promotion to the post of Inspector of Central Excise – Regarding.

***

I am directed to forward the list of officers who qualify for promotion to the cadre of Inspector of Central Excise having completed required number of years of service and have passed the required Departmental exam. You are requested to inform the same to the officers working under your control as per the list enclosed and to relieve them to enable them for attending the physical and endurance test at Hqrs. Office, Hyderabad on 7-11-2002 at 09.00 hrs.

Yours faithfully,

Sd/-

(T. RAMESH)

ADMINISTRATIVE OFFICER (ESTT).

32. Under Column 12(a) of the Schedule attached to the rules regulating the method of recruitment to Group 'C' posts of Inspectors in the Central Excise and Land Customs Department, Tax Assistants with 2 years of service or 5 years of service as Tax Assistant and UDCs put together working in the pre-structured cadre had been referred to. Initially the Benches of the Tribunal at Chandigarh and Madras in their Judgments dated 14-8-2003 and 4-9-2003 held that DEOs Grade-B who had been designated as STAs need not wait for 2 years as specified above. However, the Bombay Bench differed with the said view on the ground that the view expressed by the Chandigarh Bench is per incurium and relied upon the earlier decision of the Bangalore Bench. The DEOs however preferred Writ Petitions referred to supra before the High Court of Bombay as against the Judgment of the Tribunal, Bombay Bench wherein similar view taken by the Benches of Chandigarh and Madras had been taken by the Bombay High Court which had been carried by way of S.L.P. which no doubt ended in dismissal. No doubt certain factual distinguishing features in between the decision of the Bombay High Court and the present case also had been pointed out. It is not in serious controversy that the dismissal of S.L.P. is not by a reasoned order but however the stand taken by the Counsel for unofficial respondents in these Writ Petitions is that the Apex Court had put the seal of approval and hence the said decision would operate as a binding precedent and

this Court may have to follow the same. Article 141 of the Constitution of India dealing with the law declared by the Supreme Court to be binding on all Courts reads as hereunder :

> **"The law declared by the Supreme Court shall be binding on all courts within the territory of India".**

By and large Courts have to maintain a perfect balance between judicial independence and judicial discipline. In UNION OF INDIA Vs. JIAPAL SINGH it was held that dismissal of S.L.P. at threshold without a reasoned order cannot be treated as a precedent. In SMT.KESAR DEVI Vs. UNION OF INDIA AND OTHERS it was held that the Judgment of a Court not to be interpreted like a statute where every word as far as possible has to be given a literal meaning and no word is to be ignored. In DIVISIONAL CONTROLER, KSRTC Vs. MAHADEVA SHETTY the Apex Court observed:

> **"So far as *Nagesha case* (1997) 8 SCC 349) relied upon by the claimant Simple Imprisonment concerned, it is only to be noted that the decision does not indicate the basis for fixing of the quantum as a lump sum was fixed by the Court. The decision ordinarily is a decision on the case before the Court, while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. Therefore, while appellant applying the decision to a later case, the Court dealing with it should carefully try to ascertain the principle laid down by the previous decision. A decision often takes its colour from the question involved in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. The only thing binding as an authority upon a subsequent Judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty as without an investigation into the facts, it cannot be assumed whether a similar direction must or ought to be made as a measure of social justice. Precedents sub silentio and without argument are of no moment. Mere casual expressions carry no weight at all, nor every passing expression of a Judge, however eminent, can be treated as an ex cathedra statement having the weight of authority."**

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In ASHWANI KUMAR SINGH Vs. U.P. PUBLIC SERVICE COMMISSION AND OTHERS it was held at paras 10 to 12 :

> **"Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark upon lengthy discussions, but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statues. In *London Graving Dock Co. Ltd. Vs. Horton* (1951 AC 737 (1951) 2 All.E.R. 1 (HL) (AC at p.761) Lord McDermott observed : (All E.R. p.14 C-D)**
>
> **"The matter cannot, of course, be settled merely by treating the *ipsissima verba* of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge….."**
>
> **In *Home Officer v. Dorset Yacht Co.* (1970) 2 All.E.R.294 : 1970 AC 1004 : (1970) 2 WLR 1140 (HL) Lord Reid said, "Lord Atkin's speech … is not to be treated as if it were a statutory definition. It will require qualification in new circumstances" (All E.R. p.297 g-h). Megarry, J. in *Shepherd Homes Ltd. v. Sandham* (No.2) (1971) 1 WLR 1062 : (1971) 2 All.E.R. 1267) observed : (All E.R. p.1274d-e) "One must not, of course, construe even a reserved judgment of even Russell, L.J. as if it were an Act of Parliament;" In *Herrington v. British Rlys. Board* (1971) 2 WLR 537 : (1972) 1 All.E.R. 749 : 1972 AC 877 (HL) Lord Morris said : (All.E.R. p.761c)**
>
> **"There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case".**
>
> **Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper."**

While dealing with dismissal of S.L.P. by a non-speaking order in INDIAN OIL CORPORATION LTD. Vs. STATE OF BIHAR at para-8 held :

> **"It is not the policy of this Court to entertain special lave petitions and grant leave under Article 136 of the Constitution save in those cases where some substantial question of law of general or public importance is involved or there is manifest injustice resulting from the impugned order or judgment. The dismissal of a special leave petition in limine by a non-speaking order does not therefore justify any inference that by necessary implication the contentions raised in the special leave petition on the merits of the case have been rejected by this Court. It may also be observed that having regard to the very heavy backlog of work in this Court and the necessity to restrict the intake of fresh cases by strictly following the criteria aforementioned, it has very often been the practice of this Court to grant special leave in cases where the party cannot claim effective relief by approaching the concerned High Court under Article 226 of the Constitution. In such cases also the special leave petitions are quite often dismissed only by passing a non-speaking order especially in view of the rulings already given by this Court in the two decisions aforecited, that such dismissal of the special leave petition will not preclude the party from moving the High Court for seeking relief under Article 226 of the Constitution. In such cases it would work extreme hardship and injustice if the High Court were to close its doors to the petitioner and refuse him relief under Article 226 of the Constitution on the sole ground of dismissal of the special leave petition."**

The decision in AHMEDABAD MANUFACTURING AND CALICO PRINTING COMPANY LIMITED Vs. WORKMEN also may be referred to in this regard. In UNION OF INDIA Vs. ALL INDIA SERVICES PENSIONERS ASSOCIATION at para-6 held it was held :

> **"With great respect to the Tribunal it should be stated that the way in which it has tried to ignore the decision of this Court in the Andhra Pradesh Stage Government Pensioners Association's case (AIR 1986 SC 1907) (supra) is not correct. In the above decision the two learned Judges, who decided that case have given reasons for not applying the rule in D.S.Nakara's case (AIR 1983 SC 130) (supra) insofar as the liability of the Government to pay gratuity on retirement is concerned. The first ground relied on by the Tribunal not to follow the said decision is that it had been rendered by this Court while dismissing some special leave petitions. This is a wholly untenable ground. The special leave petitions were not**

dismissed without reasons. This Court had given reasons for dismissing the special leave petitions. When such reasons are given the decision becomes one which attracts Article 141 of the Constitution which provides that the law declared by the Supreme Court shall be binding on all the courts within the territory of India. The second ground given by the Tribunal is that the decision was one rendered in a case involving a notification issued by the Andhra Pradesh Government but not one touching the notification dated 24-1-1975 involved in this case. This is also not tenable. The Supreme Court was considering the question of applicability of the principle enunciated in D.S. Nakara's case to the case of gratuity. The views expressed by this Court should, therefore, apply to all cases of gratuity where similar features exist and it should apply to the present case too. If what the Tribunal had held is correct then D.S. Nakara's case will not be applicable to any order of pension passed by any State Government. That would indeed be a startling proposition with which we do not agree. As regards the third ground it is no doubt true that the High Court of Punjab and Haryana in its decision in V.P. Gautama Vs. Union of India, 1984 Lab.I.C. 154 had observed that "it follows that the liberalized pensionary benefits including death-cum-retirement gratuity granted to pensioners by the amendment made in 1975 and 1979 shall be payable to all persons entitled to pensionary benefits under the Retirement Benefits Rules, 1958 irrespective of the date of the retirement from service." But at the end of its decision the High Court passed the following order :

"In the result, a writ of mandamus is issued to the Union of India and the other respondents directing them to compute and pay pensionary benefits to the petitioner along with interest on the amounts becoming payable to him in terms of this order. The petitioner shall also be entitled to the costs of this petition."

In GAON SABHA Vs. NATHI it was held that the settled legal position is that the dismissal of S.L.P. without speaking order does not constitute *res judicata* and therefore it is open to examine the question on merits. In NARCOTIC CONTROL BUREAU Vs. DILIP PRAHLAD NAMADE relying upon several decisions of the Apex Court it was held that an order in S.L.P. without detailed reasons would not operate as a binding precedent. The decisions in KRISHNA KUMAR Vs. UNION OF INDIA and PRAKASH AMICHAND SHAH Vs. STATE OF GUJARAT also may be

referred to in this regard. In RAMESH SINGH Vs. STATE OF A.P. it was held that unless and until the facts and circumstances in other case are in pari materia with the facts and circumstances of the case on hand, it is not proper to treat the earlier case as a precedent. In RUDRAPPA RAMAPPA JAINPUR Vs. STATE OF KARNATAKA it was held that the mere similarity of facts in one case cannot be used to determine the conclusion of facts in yet another case. The usual expressions in an order always do not necessarily reflect the reasons or application of mind. The considerations which weigh with the Apex Court while deciding the S.L.Ps. may have to be taken into account in this regard. Where the Court is doubtful on this aspect it would be just and proper to decide the matter on its own merits in stead of being guided away by such an order of the Apex Court having no precedential value since it is more concerned with the judicial discipline and the functioning of the system as well.

33. In the light of the reasons which had been recorded in detail by my learned brother the said details need not be repeated again. Hence in the light of the peculiar facts and circumstances this Court is of the considered opinion that the writ petitioners are bound to succeed and accordingly the Writ Petitions shall stand allowed. No order as to costs.

_____

P.S. NARAYANA,J

Date :02-03-2005
L.R. copy to be marked : YES

CHV & AM

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief justice on this Wednesday, the Second day of March, Two thousand Five.

ASST. REGISTRAR

// TRUE COPY //

SECTION OFFICER

ONE FAIR COPY TO THE ON'BLE MR. JUSTICE G. BIKSHAPATHY

(FOR HIS LORDSHIP'S KIND PERUSAL)

ONE FAIR COPY TO THE ON'BLE MR. JUSTICE P.S. NARAYANA

(FOR HIS LORDSHIP'S KIND PERUSAL

To

1. The Secretary, rep. Union of India, Ministry of Finance

and Company Affairs, Department of Revenue, 152,

Central Board of Excise and Customs, Computer Centre

Project Office, North Block, New Delhi.

2.The Chairman, Central Board of Excise and Customs,

North Block, New Delhi.

3. Member (P &V), Central Board of Excise and Customs,

Government of India, Ministry of Finance,
Department of Revenue, North Block, New Delhi.

4. The Chief Commissioner of Customs and Central Excise,

LB Stadium Road, Basheer Bagh, Hyderabad - 11.

5. The Commissioner of Customs and Central Excise,

Hyderabad – II Commissionerate, LB Stadium Road,

Basheer Bagh, Hyderabad - 11.

6.The Commissioner of Customs and Central Excise,

Hyderabad - III Commissionerate, LB Stadium Road,
Basheer Bagh, Hyderabad - 11.

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Court of A.P. Hyderabad (OUT)

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S.C. FOR CENTRAL GOVT.

12. One copy to MR. NOOTY RAM MOHANA RAO

13. One copy to MR.J.SUDHEER, Advocate for the Petitioner:

14. One copy to Mr. **MR.Ramesh Ranganadhan Counsel for the Petitioner:**

15. One copy to MR.M.ratna Reddy, Advocate for the Petitioner.

16.The Under Secretary, Union of India, Ministry of law, Justice & Company Affairs, New Delhi.

17. The Secretary, A.P. Advocates' Association Library, High Court Buildings, Hyderabad.